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Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

Debtor.

Case No. BK-S-06-10725-LBR

Chapter 11

**DECLARATION OF GEOFFREY L.
BERMAN IN SUPPORT OF
OMNIBUS OBJECTION OF USACM
TRUST TO PROOFS OF CLAIM
BASED UPON INVESTMENT IN
THE COMVEST LOAN**

**Date of Hearing: August 30, 2011
Time of Hearing: 10:30 a.m.
Estimated Time for hearing: 10 min.**

Geoffrey L. Berman declares under penalty of perjury:

1. I am an adult person competent to testify in court.
2. I make this declaration based upon my personal knowledge, and upon the records USA Commercial Mortgage Company.
3. I am the Trustee of the USACM Liquidating Trust ("USACM Trust"), which is an entity created by the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization ("Plan"), in the jointly-administered bankruptcy cases, In re USA Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States Bankruptcy Court for the District of Nevada.
4. USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding for an acquisition and development loan to borrowers identified as "ComVest

Capital Advisors, Inc.”¹ A copy of the Offer Sheet is attached hereto as **Exhibit B** and incorporated by this reference. The total loan amount proposed was \$4,500,000. *Id.* The Offer Sheet described the investment as a “First Trust Deed Investment” and noted that the investment would be secured by a first deed of trust on “approximately 60,000 square feet with an apartment complex with a total of 36 units.” *Id.* The collateral was located approximately one hour from Orlando, in Satellite Beach, Florida. *Id.* Pursuant to the Offer Sheet, the Borrower was going to purchase the apartment complex and convert them into condominium units. *Id.* The loan to value was 66% “based on estimated retail sell out....” *Id.*² The Trust’s review of the USACM loan files found numerous documents purporting to address the then current value of the collateral. The Trust has not been able to confirm which document(s) were in fact provided to the Direct Lenders. The anticipated loan to value was anywhere from the purported 63% to as much as 113%.

5. On January 11, 2006, Borrower made and delivered to various lenders, including the Direct Lenders identified in **Exhibit A**, a “Promissory Note Secured by Mortgage” (the “Note”) and a Loan Agreement. The Note and Loan Agreement provided for a loan of up to \$4,500,000, with an initial advance of \$3,500,000. *Id.* The USACM records reflect the initial loan was funded; no subsequent advances were made to the Borrower. The Note was secured by a “Mortgage, Security Agreement and Assignment of Rents” (the “Mortgage”) from Borrower in favor of the Direct Lenders, which was recorded in the official records of Brevard County, Florida on January 17, 2006 at Instrument Number 2006013674. The Note was also supported by an Unconditional Guaranty signed by William Lemke on January 12, 2006.

6. The USACM “Loan Summary” dated July 31, 2006 and filed in this case shows that Borrower was “Non-performing” on the Note as of July 31, 2006. During this

¹ The loan was ultimately made to a different entity, ComVest Capital Satellite Arms, Inc.

² Pursuant to the Offer Sheet, an appraisal had been ordered, but the Trustee has not been able to determine whether an appraisal was ever performed.

1 bankruptcy case through the transfer of servicing to Compass, USACM treated the Direct
2 Lenders with respect to any interim payments by the borrower in accordance with this
3 Court's orders and the confirmed Plan.

4 I declare under penalty of perjury that the foregoing is true and correct.

5 7. Dated: July 24, 2011

6 /s/ Geoffrey L. Berman

7 Geoffrey L. Berman

8 Copy of the foregoing (without exhibits)
9 Deposited on July 24, 2011 in U.S. Mail,
10 First Class postage prepaid, to the
11 Investors listed on Exhibit A.

12 /s/ Matt Burns

13 Matt Burns
14 Lewis and Roca LLP
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